

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

CHRISTOPHER BROWN, *et al.*, on behalf of  
themselves and all others similarly situated,

Plaintiffs,

v.

AMAZON.COM, INC., a Delaware  
corporation,

Defendant.

Case No. 2:22-cv-00965-JHC

STIPULATED MOTION AND ORDER  
REGARDING EXPERT DISCOVERY

1 The Parties in the above-captioned action, by and through their respective undersigned  
2 counsel, have agreed and stipulated to certain protocols regarding expert discovery in the above  
3 captioned action (“Expert Stipulation”), subject to approval by the Court.

4 **I. GENERAL PROVISIONS**

5 1. This Expert Stipulation applies to the Parties to the above captioned action and  
6 provides the protocols for conducting expert discovery.

7 2. Except as provided otherwise herein, expert discovery shall be governed by the  
8 Federal Rules of Civil Procedure. To the extent that this Expert Stipulation imposes limitations  
9 on discovery which otherwise would be available under the Federal Rules of Civil Procedure, the  
10 Parties have agreed to any such limitations. Neither the terms of the Stipulation and Order nor  
11 the Parties’ agreement to them shall be considered an admission by any person that any of the  
12 information restricted from discovery by this Stipulation and Order would otherwise be  
13 discoverable or admissible.

14 3. This Expert Stipulation shall apply to all prior and future work by experts in this  
15 action.

16 4. Nothing in this Expert Stipulation shall limit or waive a Party’s right to object to  
17 the admission into evidence of any opposing Party’s expert report or opinion(s) or other  
18 materials, or to the qualification of any person to serve as an expert witness.

19 5. The Parties agree that they are not required to produce or exchange any log of any  
20 material, otherwise discoverable, that is precluded from discovery or disclosure pursuant to this  
21 Expert Stipulation.

22 **II. NON-TESTIFYING EXPERTS**

23 6. Except as provided for in the Amended Protective Order, dated July 29, 2024, the  
24 Parties agree that there shall be no discovery or disclosure with respect to non-testifying experts;  
25 provided, however, that if a Party retains as a consulting expert a person who is otherwise a fact  
26 witness, only that person’s communications within the scope of a *bona fide* consulting expert  
27 agreement shall be exempt from discovery or disclosure under this paragraph.  
28

1           7.       The Parties agree that notes, drafts, written communications, or other records of  
2 preliminary or intermediate work prepared or created by, or at the direction of, non-testifying  
3 experts shall not be the subject of any form of discovery (including by deposition).

4           8.       The Parties agree that budgets, invoices, bills, receipts, or time records concerning  
5 non-testifying experts or their staff, assistants, colleagues, or associates, or their companies or  
6 organizations, shall not be the subject of any form of discovery (including by deposition).

7           9.       To the extent a non-testifying expert is later designated and disclosed as a  
8 testifying expert, that person shall be subject to discovery or disclosure pursuant to Section III of  
9 this Expert Stipulation governing testifying experts, including with respect to any documents that  
10 would otherwise be subject to protection under this Section II arising from that person's work as  
11 a non-testifying expert.

### 12       **III.    TESTIFYING EXPERTS**

#### 13       **A.    Expert Materials to Be Disclosed**

14           10.     Within three (3) business days after service of a report under Rule 26(a)(2)(B), the  
15 Party submitting the report shall produce:

16               a.     all documents relied upon by the expert in forming their opinions for such  
17 report, except to the extent such documents have already been produced in the above captioned  
18 litigation or are publicly available, and can be readily identified from the report;

19               b.     a copy of all data and other information relied upon by the expert in  
20 forming their opinions for such report, including, but not limited to, underlying data,  
21 spreadsheets (including formulas therein), computerized regression analysis and/or other  
22 underlying reports, programs, computer codes and schedules sufficient to reconstruct the work,  
23 calculations, and/or analyses upon which the testifying expert is relying for their opinions;

24               c.     exhibits, information, charts, tables or data processed or modeled by a  
25 computer at the direction of a testifying expert and relied upon by the testifying expert in the  
26 course of forming the testifying expert's opinions;

27               d.     all raw and final data sets exactly as relied upon by the testifying expert,  
28 and all spreadsheets in the expert report or exhibits thereto in native format; and

1 e. copies of industry reports and articles, as well as copies of any excerpt(s)  
2 of books, as relied upon by the testifying expert.

3 11. Information required by Paragraph 10 shall be produced electronically (via email,  
4 disc, or FTP site), and (where feasible) in native format or, if native format is not available, a  
5 format from which all data contained within is readily extractable. To the extent that such  
6 disclosures include charts, tables, exhibits, information or data processed or modeled by  
7 computer, the submitting Party shall produce machine-readable copies of the charts, tables,  
8 exhibits, information or data (including all linked or used data and data files, input and output  
9 files, formulas contained within spreadsheet cells and similar electronic information necessary to  
10 understand the charts, tables, exhibits, information or data) sufficient to allow the replication of  
11 all analysis contained in the report, along with a list of all computer programs used by the expert  
12 for any numerical or other analysis in the report; the Parties agree to meet and confer in good  
13 faith regarding access to and use of any program(s) that are not commercially available. In  
14 addition, to the extent such disclosures include information gleaned from websites and from  
15 third-party sources not readily available, copies of the content of those websites or third-party  
16 sources shall also be provided. For avoidance of doubt, the disclosure requirement in this  
17 paragraph does not apply to any demonstratives that a Party may create for future court hearings  
18 or trial. The use and disclosure of expert demonstratives at trial will be governed by a pre-trial  
19 stipulation or order.

20 12. Documents that have been previously produced in the above captioned action  
21 need not be produced if they are identified by Bates number.

22 13. Transcripts of depositions taken and previously produced in the above captioned  
23 action need not be produced if the producing Party identifies in writing the deponent names and  
24 dates for transcripts.

25 **B. Expert Materials Not Requiring Disclosure and Limits on Discovery**

26 14. The below-listed categories of documents, communications, and other recording  
27 media need not be disclosed by any Party and an expert may not be examined at deposition,  
28

1 hearing or trial on the contents of the below-listed categories of documents, communications,  
2 and other recording media:

3 a. any notes or other writings taken or prepared by or for an expert witness in  
4 connection with this matter (aside from the final written expert report(s) and notes generated or  
5 referred to by the expert while testifying at deposition, hearing, or trial), including (i) written  
6 correspondence or memoranda to or from, and notes of conversations between and among, the  
7 expert witness and (a) the expert's assistants and/or clerical or support staff (regardless of title),  
8 (b) other expert witnesses or non-testifying expert consultants, including their assistants and/or  
9 clerical or support staff (regardless of title); (c) attorneys for the Party or Parties for whom the  
10 expert is offering opinions and their clerical or support staff; and (iv) the Party or Parties for  
11 whom the testifying expert is offering opinions;

12 b. copies of materials produced by any Party in this litigation bearing the  
13 notes, markings, or comments of the expert, the expert's assistants and/or clerical or support  
14 staff, other expert witnesses or non-testifying expert consultants (including their staffs), or  
15 attorneys for the Party or Parties and their clerical or support staff;

16 c. any draft reports, draft studies, draft work papers, draft declarations, or  
17 other draft materials or preliminary work product prepared by, for, or at the direction of, an  
18 expert witness or his or her staff or agents, regardless of the form in which the draft is recorded;  
19 and

20 d. the content or fact of any communications, written or otherwise  
21 exchanged, recounted, or memorialized in connection with the above captioned action among  
22 and between a testifying expert and any other person, including: (i) the testifying expert's  
23 assistants and/or clerical or support staff (regardless of title), (ii) other expert witnesses or non-  
24 testifying expert consultants (including their assistants and/or clerical or support staff),  
25 (iii) attorneys for the Party or Parties and their clerical or support staff, regardless of the form of  
26 such communications, and (iv) the Party or Parties for whom the testifying expert is offering  
27 opinions; and  
28

1 e. any budgets, invoices, bills, receipts, work plans, or time records  
2 concerning a testifying expert's work in the above captioned action.

3 15. Except as stated in Paragraph 17, the foregoing exclusions from discovery set  
4 forth in Paragraph 14 do not apply to any facts, information, communications, or documents that  
5 the expert relies upon as a basis for forming their opinions in the above captioned action.

6 16. This Expert Stipulation does not preclude reasonable questions at a deposition,  
7 hearing, or trial related to a testifying expert's compensation, or the number of hours the  
8 testifying expert expended in preparing their opinion(s).

9 17. Nothing herein shall be construed to prevent questions relating to the substance of  
10 the testifying expert's opinion(s) (including alternative theories, methodologies, variables, or  
11 assumptions that the testifying expert may not have relied upon in forming his or her opinions).  
12 Thus, notwithstanding anything to the contrary herein, a testifying expert may be presented at a  
13 deposition, hearing, or trial with documents, testimony, or other materials not disclosed in this  
14 Section III and questioned about whether the testifying expert relied or did not rely on such  
15 documents, testimony, or other materials in formulating their opinion(s), and whether such  
16 documents, testimony, or other materials would cause the testifying expert to alter their  
17 opinion(s) in any respect. A testifying expert's communications with their employees and staff  
18 and non-testifying expert consultants (including their assistants and/or clerical or support staff),  
19 as well as any communications with counsel for the producing Party as to the relevance or  
20 significance of facts or data and as to the consideration of alternatives, however, are completely  
21 exempt from disclosure.

22 18. Nothing in this Stipulation shall be construed to preclude or limit the  
23 discoverability of any documents or other information relied upon by an expert witness in  
24 preparing his or her report(s) or that is otherwise discoverable under any order of the Court.

1 IT IS SO STIPULATED.

2 DATED: January 8, 2025

HAGENS BERMAN SOBOL SHAPIRO LLP

3 By /s/ Steve W. Berman

Steve W. Berman (WSBA No. 12536)

4 By /s/ Barbara A. Mahoney

Barbara A. Mahoney (WSBA No. 31845)

5 1301 Second Avenue, Suite 2000

6 Seattle, WA 98101

7 Telephone: (206) 623-7292

8 Facsimile: (206) 623-0594

E-mail: [steve@hbsslaw.com](mailto:steve@hbsslaw.com)

[barbaram@hbsslaw.com](mailto:barbaram@hbsslaw.com)

9 Anne F. Johnson (*pro hac vice*)

10 549 Dean Street, Suite 24

11 Brooklyn, NY 11238

12 Telephone: (718) 916-3520

E-mail: [annej@hbsslaw.com](mailto:annej@hbsslaw.com)

13 KELLER POSTMAN LLC

14 Zina G. Bash (*pro hac vice*)

15 111 Congress Avenue, Suite 500

16 Austin, TX, 78701

17 Telephone: (512) 690-0990

E-mail: [zina.bash@kellerpostman.com](mailto:zina.bash@kellerpostman.com)

18 Jessica Beringer (*pro hac vice*)

19 Shane Kelly (*pro hac vice*)

150 North Riverside Plaza, Suite 4100

20 Chicago, Illinois 60606

21 Telephone: (312) 741-5220

E-mail: [Jessica.Beringer@kellerpostman.com](mailto:Jessica.Beringer@kellerpostman.com)

E-mail: [shane.kelly@kellerpostman.com](mailto:shane.kelly@kellerpostman.com)

22 Roseann Romano (*pro hac vice*)

23 1101 Connecticut Avenue, N.W., Suite 1100

24 Washington, D.C., 20036

25 Telephone: 202-983-5484

E-mail: [roseann.romano@kellerpostman.com](mailto:roseann.romano@kellerpostman.com)

1 QUINN EMANUEL URQUHART &  
2 SULLIVAN, LLP

3 By: /s/ Alicia Cobb

4 Alicia Cobb, WSBA # 48685  
5 1109 First Avenue, Suite 210  
6 Seattle, WA 98101  
7 Telephone: (206) 905-7000  
8 Email: aliciacobb@quinnemanuel.com

9 Steig D. Olson (*pro hac vice*)  
10 David D. LeRay (*pro hac vice*)  
11 Nic V. Siebert (*pro hac vice*)  
12 Maxwell P. Deabler-Meadows (*pro hac vice*)  
13 Elle Mahdavi (*pro hac vice*)  
14 295 Fifth Avenue  
15 New York, NY 10016  
16 Telephone: (212) 849-7000  
17 Email: steigolson@quinnemanuel.com  
18 Email: davidleray@quinnemanuel.com  
19 Email: nicolassiebert@quinnemanuel.com  
20 Email: maxmeadows@quinnemanuel.com

21 Adam B. Wolfson (*pro hac vice*)  
22 865 South Figueroa Street, 10th Floor  
23 Los Angeles, CA 90017-2543  
24 Telephone: (213) 443-3000  
25 Email: adamwolfson@quinnemanuel.com

26 *Counsel for Plaintiffs and the proposed Class*

27 DAVIS WRIGHT TREMAINE LLP

28 By: /s/ John A. Goldmark

John A. Goldmark, WSBA # 40980  
MaryAnn Almeida, WSBA #49086  
920 Fifth Avenue, Suite 3300  
Seattle, WA 98104-1610  
Telephone: (206) 622-3150  
Email: JohnGoldmark@dwt.com  
Email: MaryAnnAlmeida@dwt.com

1 PAUL, WEISS, RIFKIND, WHARTON &  
2 GARRISON LLP

3 Karen L. Dunn (*pro hac vice*)  
4 William A. Isaacson (*pro hac vice*)  
5 Amy J. Mauser (*pro hac vice*)  
6 Kyle Smith (*pro hac vice*)  
7 2001 K Street, NW  
8 Washington, D.C. 20006-1047  
9 Telephone: (202) 223-7300  
Email: kdunn@paulweiss.com  
Email: wisaacson@paulweiss.com  
Email: amauser@paulweiss.com  
Email: mgoodman@paulweiss.com  
Email: ksmith@paulweiss.com

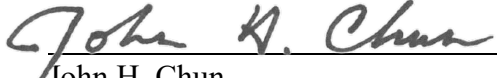
10 Meredith Dearborn (*pro hac vice*)  
11 535 Mission Street, 24th Floor  
12 San Francisco, CA 94105  
13 Telephone: (628) 432-5100  
14 Email: mdearborn@paulweiss.com

15 *Attorneys for Defendant Amazon.com, Inc.*

**ORDER**

Pursuant to stipulation, IT IS SO ORDERED.

Dated: January 10, 2025.

  
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John H. Chun  
UNITED STATES DISTRICT JUDGE